

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

BOSE CORPORATION,)
vs. Plaintiff,) Civil Action No. 1:09-CV-11439-PBS
SDI TECHNOLOGIES, INC., IMATION)
CORP., MEMOREX PRODUCTS, INC., 3XM)
CONSULTING, LLC, and DPI, INC.,)
Defendants.)

SECOND UPDATE ON THE STATUS OF THE PENDING REEXAMINATION

Pursuant to the Court's instructions, DPI, Inc. ("DPI"), Imation Corp. ("Imation"), and Memorex Products, Inc. ("Memorex") (collectively "Defendants") inform the Court that on September 29, 2010, the U.S. Patent and Trademark Office ("PTO") issued a Right of Appeal Notice to Bose in the reexamination of the Patent-in-Suit, U.S. Patent No. 7,277,765. *See* Exhibits A-1, A-2, and A-3, attached.

I. The Patent and Trademark Office Has Now Issued a Final Decision Reaffirming its Two Prior Rejections of All Claims of the '765 Patent, and Directing Bose to Appeal to the Board of Patent Appeals and Interferences if Bose Continues to Disagree with the PTO's Determination.

As the Court may recall from the prior status update filed in this matter (Dock. #98), the PTO twice rejected all 43 claims of the Bose '765 Patent and issued an Action Closing Prosecution ("ACP"). In an attempt to salvage some of its patent claims, Bose submitted Patent Owner Comments to the PTO on June 7, 2010. DPI, Imation and Memorex then submitted their Third Party Requester Comments on

August 6, 2010. After considering both sets of comments, the PTO maintained its prior rejection of all 43 claims of the '765 Patent on the same multiple independent grounds set forth in the first reexamination office action and ACP, and issued Bose a Right of Appeal Notice. *See* Exh. A-1, 2 and 3. Bose must now appeal to the Board of Patent Appeals and Interferences ("BPAI") and demonstrate that the PTO's examiners incorrectly rejected the claims of the '765 Patent.

II. The Reexamination Continues to Proceed With "Special Dispatch."

The PTO has continued to comply with the mandate of 35 U.S.C. § 314(c), that reexamination proceedings are to be conducted with "special dispatch." In the ten months since Defendants' corrected request for reexamination was granted, the PTO has: (1) considered the substance of the reexamination; (2) issued an initial office action rejecting all 43 claims of the '765 Patent; (3) considered both Bose's post-rejection Response and Defendants' Comments to Bose's post-rejection Response; (4) issued an ACP maintaining the prior rejection of all 43 claims; (5) considered both Bose's and Defendants' Comments to the ACP; and (6) issued Bose a Right of Appeal Notice.

III. A Complete Stay of the Proceedings or Voluntary Dismissal By Bose Would Be Appropriate.

The PTO has now rejected all 43 claims of Bose '765 Patent on three separate occasions. If Bose continues to disagree with the PTO's reasoned explanations as to how the numerous items of prior art invalidate all claims of the '765 Patent, Bose must appeal to the BPAI. In sum, the PTO now believes that the '765 Patent was improvidently granted. DPI, Imation and Memorex respectfully submit that, in light of

these recent developments, this action should be stayed in its entirety or Bose should voluntarily dismiss its lawsuit. These Defendants believe that, under the circumstances herein, further active prosecution of this suit by Bose should subject Bose to responsibility for an award of attorney's fees, costs and expenses incurred by Defendants (and in the reexamination proceeding) pursuant to 35 U.S.C. § 285.

Dated: October 25, 2010

Respectfully Submitted,

DPI, INC., IMATION CORP. and
MEMOREX PRODUCTS, INC.,
By their attorneys:

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Certificate of Service

I hereby certify this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF), and paper copies will be sent by mail to those indicated as non-registered participants on October 25, 2010.

/s/ Michael L. Nepple
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